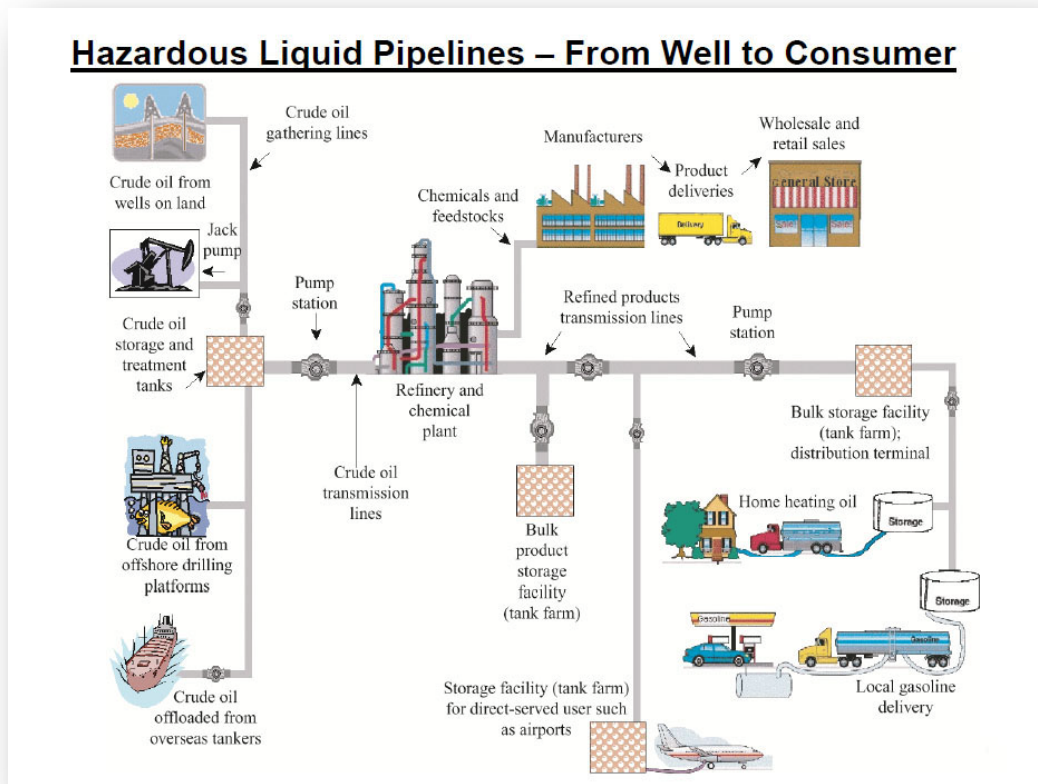




**WRITTEN STATEMENT OF CYNTHIA L. QUARTERMAN
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U.S. DEPARTMENT OF TRANSPORTATION**

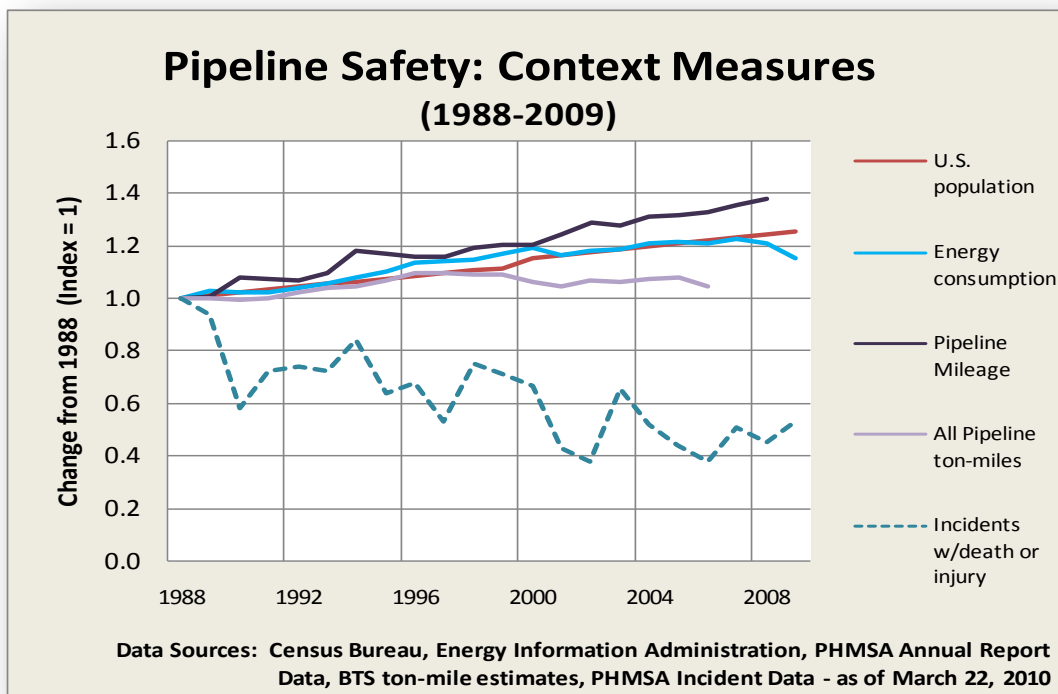
June 29, 2010

Chairwoman Brown, Ranking Member Shuster, members of the Subcommittee, thank you for the opportunity to appear today to discuss the Pipeline and Hazardous Materials Safety Administration's (PHMSA) oversight of America's hazardous liquid pipeline system. The top priority for Secretary LaHood and all of us at PHMSA is safety. We have strong commitments to reducing transportation risks to the public and environment. Our Nation's reliance on the safe and environmentally sound transportation of energy fuels and hazardous materials is increasing. PHMSA's safety oversight of the pipeline network that delivers these products is providing critical protections for the American people. The diagram below illustrates how hazardous liquids move through our pipelines from the well to the consumer:



For years, PHMSA has worked aggressively to utilize the authority given to it by Congress to enhance the safety of hazardous liquid pipelines. To do this, the agency has used responsible and methodical approaches to focus on high-risk infrastructure issues first, and provide effective solutions through enforcement and rulemakings. This tiered approach has helped PHMSA devise and implement effective rulemakings, like the ones now in place for Low Stress lines. With Congressional support, PHMSA has also built and deployed a consensus-based, collaborative research and development program that is bringing new technologies to market and helping to strengthen and maintain pipeline integrity.

These initiatives have been successful. PHMSA has driven down the number of serious pipeline incidents over the past 20 years, while all the traditional measures of risk exposure have been rising – population, energy consumption, and pipeline ton-miles. Pipeline incidents involving death or injury have declined by 50% over the last two decades. As indicated in the chart below, we aim to continue this long-term trend.



The Pipeline Safety Law and regulations apply to the transportation of hazardous liquids by pipeline under the statutory jurisdiction of PHMSA and the States. That combined jurisdiction is broad and covers any pipeline in or affecting interstate or foreign commerce, including wholly intrastate pipelines and pipelines located on the Outer Continental Shelf (OCS). PHMSA jurisdiction encompasses any pipeline that transports a highly volatile liquid (e.g., propylene, ethylene, butylene, and anhydrous ammonia) or other hazardous liquids through a non-gathering line pipeline that has a maximum operating pressure greater than 20 percent of its specified minimum yield strength. In addition, PHMSA has jurisdiction over any pipeline that crosses a waterway used for commercial navigation, certain onshore petroleum gathering lines, and certain hazardous liquids or carbon dioxide low-stress pipelines.

PHMSA can only provide oversight and ensure the safety of hazardous liquid pipelines under its jurisdiction. As requested by this Subcommittee, I will provide a brief description of the statutory and regulatory authorities held and exercised by PHMSA and its State partners to oversee the safety of hazardous liquid pipelines. My testimony today will explain PHMSA's authority over hazardous liquid pipelines and how it uses this authority to minimize safety risks.

I. CONSTITUTIONAL AUTHORITY

The Commerce Clause of the U.S. Constitution is the authority underlying the Pipeline Safety Laws.¹ It permits federal regulation of the transportation of hazardous liquids by pipeline. Pursuant to that authority, Congress may mandate federal regulation of the use of the channels of interstate commerce, the instrumentalities of and persons or things in interstate commerce, and any activity that has a substantial effect on interstate commerce².

II. STATUTORY AUTHORITY AND PHMSA'S REGULATORY EXCLUSIONS

A. Congress Provided PHMSA and States Authority to Regulate the Transportation of Hazardous Liquids by Pipeline.

1. PHMSA Has Broad, but not Unlimited, Statutory Authority to Regulate the Transportation of Hazardous Liquids by Pipeline.

PHMSA has statutory authority over "transporting hazardous liquids." "Hazardous liquid," is defined in the Pipeline Safety Laws as petroleum or a petroleum product, or any substance in a liquid state that the Secretary of Transportation decides may pose an unreasonable risk to life or property, including carbon dioxide.³ "Transporting hazardous liquid," is defined in the Pipeline Safety Laws as the movement (or storage incidental to such movement) of a hazardous liquid by pipeline in or affecting interstate commerce; but excluding the movement of a hazardous liquid through gathering lines in rural areas; onshore production, refining, or manufacturing facilities; or storage or in-plant piping facilities associated with onshore production, refining or manufacturing facilities.⁴

Congress has further defined PHMSA's jurisdiction by including a statutory meaning of gathering lines. A "regulated gathering line" must be defined in regulation by PHMSA based upon consideration of certain physical and functional factors. These factors include location, length from the well site, operating pressure, throughput, and composition of the product transported. Whereas a crude oil gathering line that is less than 6 inches in diameter, operates at low pressure, and is located in a rural area that is not unusually sensitive to environmental damage, is explicitly excluded from regulation by statute.⁵

¹ The Pipeline Safety Act (PSA), 49 U.S.C.A. § 60101 et seq., enacted in 1994, combined and recodified, without substantive changes, the two then existing pipeline safety statutes, the Hazardous Liquid Pipeline Safety Act of 1979 (former 49 U.S.C.A. § 2001 to 2014) (HLPSA) and the Natural Gas Pipeline Safety Act of 1968 (former 49 U.S.C.A. § 1671 et seq.) (NGPSA).

² *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005).

³ *Id.* § 60101(a)(4).

⁴ *Id.* § 60101(a)(22).

⁵ *Id.* § 60101(b)(2).

Moreover, low-stress hazardous liquid pipelines (i.e., those operating at a relatively low pressure) that are regulated by the U.S. Coast Guard, or that serve refining, manufacturing, or truck, rail, or vessel terminals, which are less than one mile long and do not cross an offshore or commercially navigable waterway, are excluded from PHMSA oversight (at least until PHMSA completes the Low Stress Rulemaking).⁶ The transportation of hazardous liquids or carbon dioxide through onshore production, refining, or manufacturing facilities (and any associated storage or in-plant piping systems) is also excluded.⁷ The Occupational Safety and Health Administration regulates some of these facilities to ensure safety of workers, and others are regulated by State agencies. These facilities and associated piping are considered non-transportation-related pursuant to Executive Order 12777 and are regulated by the Environmental Protection Agency (EPA).⁸

While PHMSA is responsible for ensuring the safety of hazardous liquid pipeline transportation, it does not have the authority to determine the site or route of those facilities.⁹ Other Federal agencies, including the Department of the Interior, the Department of State, the EPA, and State agencies make those decisions.

PHMSA's rulemaking authority is also prescribed by the Pipeline Safety Laws. Specifically, PHMSA must consider certain factors in those proceedings by statute, including any relevant hazardous liquid pipeline safety information, the appropriateness and reasonableness of any proposed standard, and the reasonably-identified costs and benefits of any new regulation,¹⁰ and except where otherwise provided by statute, can only issue a regulation if its benefits justify its costs.¹¹

Finally, there are other laws of more general applicability that PHMSA must comply with in exercising its regulatory responsibilities, for example: (1) the National Environmental Policy Act of 1969,¹² a statute that requires Federal agencies to consider the environmental impacts of and proposed alternatives to certain regulations, (2) the Paperwork Reduction Act of 1995,¹³ a statute that imposes certain requirements on the collection of information, and (3) the National Technology Transfer and Advancement Act of 1995,¹⁴ a statute that encourages federal agencies to use consensus industry standards.

2. The States Have Statutory Authority to Regulate the Transportation of Hazardous Liquids by Pipeline.

Congress has preserved a role for the States in regulating the intrastate transportation of hazardous liquids by pipeline. In particular, a State is allowed to regulate exclusively a pipeline if located wholly within its borders, provided that State has a current certification or agreement with PHMSA and has adopted standards that are compatible with the minimum federal

⁶ *Id.* § 60102(k).

⁷ *See id.* § 60101(a)(22).

⁸ *See* 40 C.F.R. § 112

⁹ 49 U.S.C. § 60104(e).

¹⁰ 49 U.S.C. § 60102(b)(2).

¹¹ 49 U.S.C. § 60102(b)(5).

¹² Pub. L. No. 91-190, 83 Stat. 852 (1970) (amended by Pub. L. No. 94-52 (1975); Pub. L. No. 94-83 (1975); Pub. L. No. 97-258, § 4(b) (1982); currently codified at 42 U.S.C. §§ 4321-4347).

¹³ 44 U.S.C. §§ 3501-3520.

¹⁴ Pub. L. No. 104-113, 110 Stat. 775 (1996).

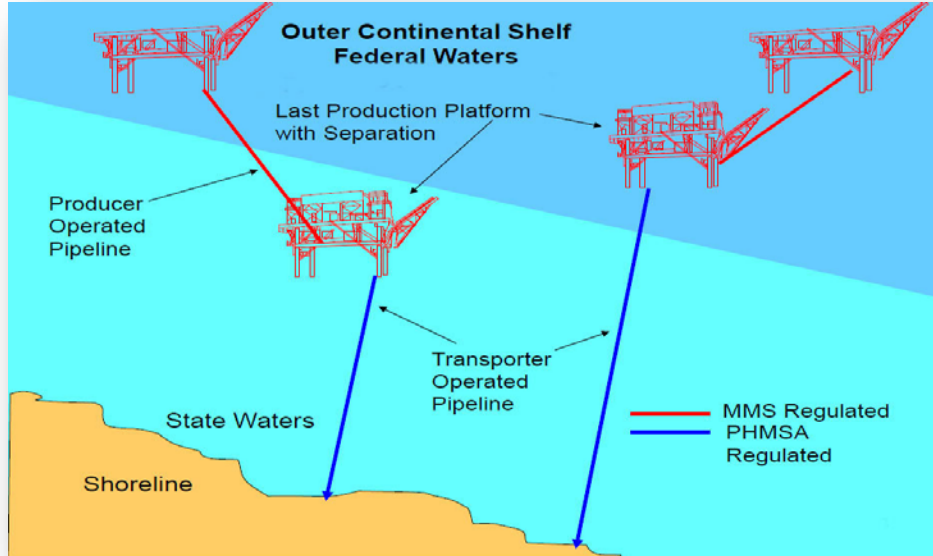
requirements.¹⁵ A State may also serve as PHMSA's agent for purposes of inspecting interstate hazardous liquid pipeline facilities.¹⁶ States cannot adopt or apply any of its own regulations to those facilities.¹⁷

B. There are Hazardous Liquids Pipelines that PHMSA Does Not Have Statutory Authority to Regulate.

As is obvious, the Pipeline Safety Regulations do not apply to the transportation of hazardous liquids where precluded by statute. That includes the movement of hazardous liquids by pipeline through certain gathering lines in rural areas, and storage associated with onshore production, refining or other manufacturing facilities or non-pipeline modes of transportation.¹⁸ These pipelines typically move unprocessed crude oil from producing well areas to processing facilities and are considered non-transportation related activities that are subject to the EPA's spill prevention and response regulations.

C. In Some Cases, PHMSA Has Historically Not Regulated Certain Hazardous Liquid Pipelines for Policy Reasons.

Certain exclusions exist to avoid jurisdictional conflicts and the application of duplicative Federal or State regulations. In particular, most producer-operated pipeline facilities on the OCS are regulated by the U.S. Department of the Interior, pursuant to the terms of a Memorandum of Understanding with DOT¹⁹ and non-transportation related facilities, including intra-facility piping, are regulated by the EPA pursuant to the Clean Water Act.



¹⁵ 49 U.S.C. § 60105 (2006).

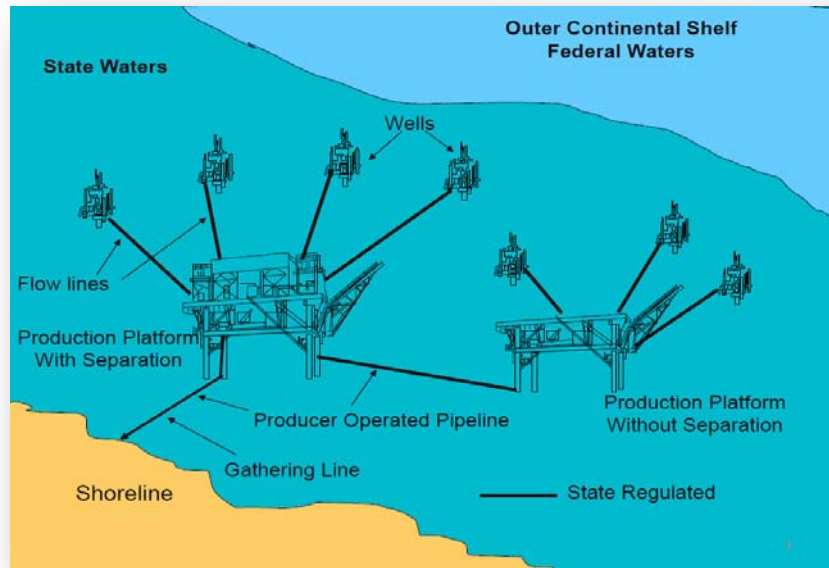
¹⁶ *Id.* § 60106(b)(1).

¹⁷ *Id.* § 60104(c).

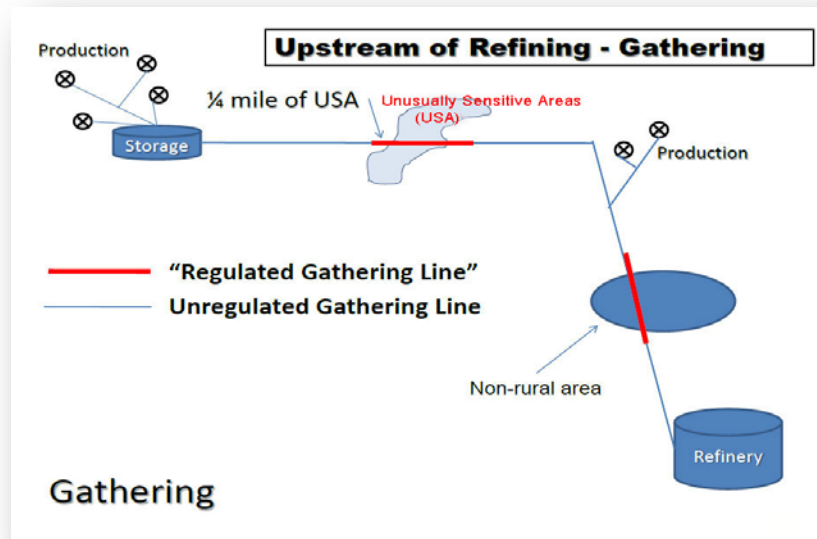
¹⁸ *See id.* § 60101(a)(22).

¹⁹ *See* 49 C.F.R. § 195.1(b)(6)-(7) (2010); Pipeline Safety: Regulations Implementing Memorandum of Understanding With the Department of the Interior, 62 Fed. Reg. 61692 (Nov. 19, 1997); 33 U.S.C. § 1520; *see also* Memorandum of Understanding Among the Secretary of the Interior, Secretary of Transportation, and Administrator of the Environmental Protection Agency (1994); Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities, 59 Fed. Reg. 34070 (July 1, 1994).

There are also certain offshore pipelines in State waters that are reserved for regulation by the States.²⁰



Other exclusions in our regulations exist for historical reasons, including for pipelines that transport hazardous liquids by gravity,²¹ or for lack of a sufficient basis for imposing a potential regulation, as in the case of certain small (less than 6") and medium (6" to 8") diameter rural gathering lines.²² The diagram below illustrates the gathering lines that are currently unregulated:



²⁰ 49 C.F.R. § 195.1(b)(5).

²¹ Explosives and Other Dangerous Articles: Pipeline Transportation, 32 Fed. Reg. 1098 (Jan. 31, 1967).

²² See 49 U.S.C. §60101(b)(2)(B)(ii).

In summary, PHMSA's statutory and regulatory exclusions are specified in the following provisions:

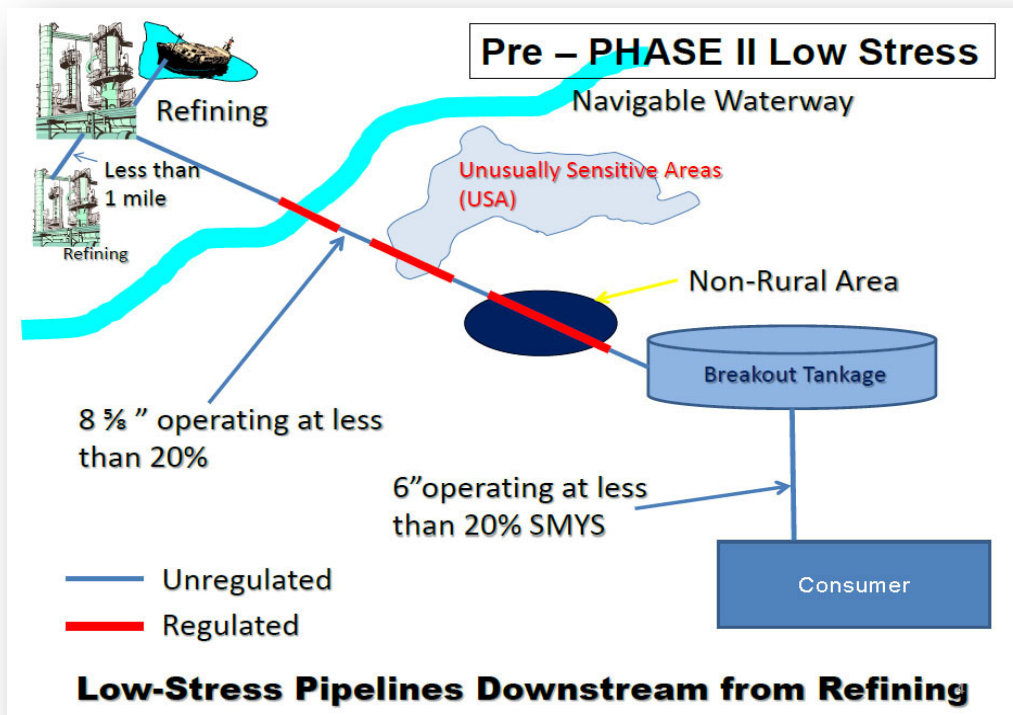
Unregulated pipelines:	Statutory Provisions	Regulatory Provisions
Transportation of a hazardous liquid transported in a gaseous state.	60101(a)(4)(B)	49 CFR 195.1(b)(1)
Transportation of a hazardous liquid through a pipeline by gravity.	60101(a)(22)	49 CFR 195.1(b)(2)
A pipeline subject to safety regulations of the U.S. Coast Guard.	60102(k)(3)(A)	49 CFR 195.1(b)(3)
A low-stress pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than one mile long and does not cross navigable waterway.	60102(k)(3)(B)	49 CFR 195.1(b)(4)
Transportation of hazardous liquid or carbon dioxide in an offshore pipeline in State waters where the pipeline is located upstream from the outlet flange of the following farthest downstream facility.	60101(a)(22)	49 CFR 195.1(b)(5)
Transportation of hazardous liquid or carbon dioxide in a pipeline on the OCS where the pipeline is located upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator.	33 U.S.C. 1520	49 CFR 195.1(b)(6)
A pipeline segment upstream (generally seaward) of the last valve on the last production facility on the OCS where a pipeline on the OCS is producer-operated and crosses into State waters without first connecting to a transporting operator's facility on the OCS.	33 U.S.C. 1520	49 CFR 195.1(b)(7)
Transportation of a hazardous liquid or carbon dioxide through onshore production (including flow lines), refining, or manufacturing facilities, and associated storage or in-plant piping systems.	60101(a)(22)(B)(ii) and (iii)	49 CFR 195.1(b)(8)
Transportation of a hazardous liquid or carbon dioxide by means other than pipeline.	60101(a)(22)(A)	49 CFR 195.1(b)(9)
Transportation of carbon dioxide downstream from the defined applicable injection points.	60101(a)(22)(B)(ii)	49 CFR 195.1(b)(10)
Not more than 6 inches in diameter, is low pressure, is in rural area, and not unusually sensitive to environmental damage.	60101(b)(2)(B)	49 CFR 195.1(a)(4)
Less than 6 inches, greater than 20% SMYS, in rural area, and is within ¼ mile of an unusually sensitive area.	60101(b)	49 CFR 195.1(a)(4)
Less than 8 inches, less than 20% SMYS, and is within ¼ mile of an unusually sensitive area.	60101(b)	49 CFR 195.1(a)(4)

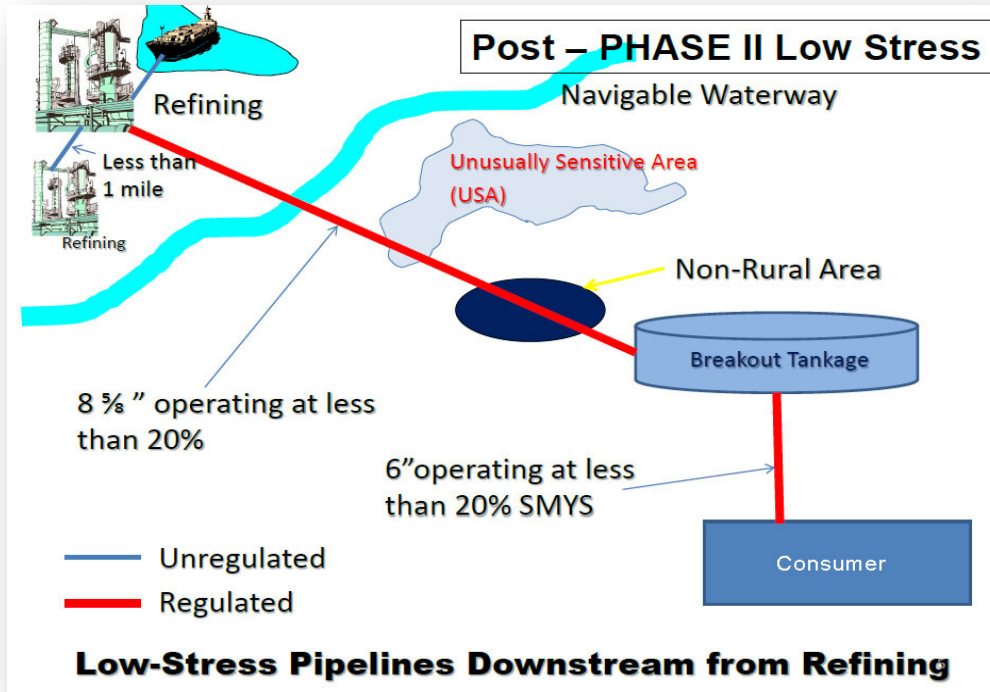
III. IMPROVING PHMSA'S STATUTORY JURISDICTION

A. PHMSA is Aggressively, but Appropriately, Administering the Nation's Pipeline Safety Laws.

PHMSA has completed nearly all of the mandates and recommendations in the Pipeline Inspection, Protection, Enforcement and Safety Act of 2006. That includes issuing regulations for low-stress pipelines and control room management and completing reports on petroleum market capacity, leak detection technologies, and liquid internal corrosion measures. In addition, PHMSA has sought to improve its relationships with State and local officials and increase its public awareness and outreach program. All States participate in the pipeline safety program, with the exception of Alaska and Hawaii. PHMSA also sponsored the launch of the a nationwide telephonic notice system for damage prevention, the 811 Call-Before-You-Dig Program, and supported the National Association of State Fire Marshals in developing and disseminating training materials for responding to pipeline emergencies.

PHMSA has taken steps to ensure that these efforts continue in the future. For instance, PHMSA has issued a new notice of proposed rulemaking for low-stress pipelines and has plans to bolster its damage prevention program. As indicated in the two diagrams that follow, this closes a significant regulatory gap in pipeline safety:





B. PHMSA and Congress Can Work Together to Improve the Regulation of Transporting Hazardous Liquids by Pipeline.

The support of Congress is critical to the safe and effective regulation of the transportation of hazardous liquids by pipeline. PHMSA is in the process of developing legislation that would address our jurisdiction over the transportation of hazardous liquids by pipeline in the future. We look forward to working with Congress to address any issues you may have concerning PHMSA's pipeline safety program and the regulation of hazardous liquid pipelines. PHMSA very much appreciates the opportunity to report on our authority over these pipelines and the opportunities that exist to strengthen oversight.

Thank you. I would be pleased to answer any questions you may have.

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